

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA RUTH RILEY,

Plaintiff-Appellee,

v

TAYLOR PUBLIC SCHOOLS,

Defendant-Appellant.

UNPUBLISHED

October 14, 2004

No. 248292

Wayne Circuit Court

LC No. 03-300738-NO

Before: Griffin, P.J., and Saad and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying its motion for summary disposition based on an assertion of governmental immunity. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred by denying its motion for summary disposition under MCR 2.116(C)(7) with regard to plaintiff’s claim based on the public building exception to governmental immunity. We agree. A decision on a summary disposition motion is reviewed de novo. *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001). To survive a motion for summary disposition under MCR 2.116(C)(7) based on governmental immunity, a plaintiff must allege facts justifying application of an exception to governmental immunity. *Fane, supra* at 74. In reviewing a decision on such a motion, an appellate court considers all documentary evidence submitted by the parties and accepts as true the contents of the complaint, unless specifically contradicted by affidavits or other appropriate documents. *Id.*

Under MCL 691.1407(1), a governmental agency is generally immune from tort liability. However, MCL 691.1406 provides for the public building exception to governmental immunity. To establish the applicability of the public building exception, a plaintiff must prove (1) a governmental agency is involved, (2) the relevant public building is open for use by members of the public, (3) the existence of a dangerous or defective condition of the public building itself, (4) actual or constructive knowledge of the alleged defect by the governmental agency, and (5) the governmental agency failed to remedy the allegedly defective condition after a reasonable amount of time. *De Sanchez v Dep’t of Mental Health*, 467 Mich 231, 236; 651 NW2d 59 (2002). The trial court found that whether a condition was defective was immaterial to the question of whether the public building exception applied. This view was incorrect because the existence of a dangerous or defective condition is one of the elements that a plaintiff must show in order to establish the applicability of the public building exception.

We conclude that the trial court erred by denying defendant's motion for summary disposition because, based on undisputed facts, no reasonable person could conclude that a dangerous or defective condition of the school building existed with regard to the area where plaintiff apparently fell at the time of the incident. From the color photographs submitted by the parties, it is manifest that the relevant condition of the building cannot reasonably be considered dangerous or defective. The floor of the school building was elevated a few inches above the pavement outside the doorway so that a person walking into the school would need to step up in order to enter the school. The vertical portion of the step was painted yellow which highlighted the difference in elevation. Put simply, the entranceway to the school, including the elevation from the outside pavement to the floor of the building, was a highly typical entranceway that cannot reasonably be viewed as constituting a dangerous or defective condition. In addition, defendant appropriately references the following discussion in *Bertrand v Alan Ford, Inc*, 449 Mich 606, 616-617; 537 NW2d 185 (1995):

In summary, because steps are the type of everyday occurrence that people encounter, under most circumstances, a reasonably prudent person will look where he is going, will observe the steps, and will take appropriate care for his own safety. Under ordinary circumstances, the overriding public policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary steps "foolproof." Therefore, the risk of harm is not unreasonable. However, where there is something unusual about the steps, because of their "character, location, or surrounding conditions," then the duty of the possessor of land to exercise reasonable care remains.

This discussion indicates that an ordinary step under typical circumstances, such as in the present case, does not involve an unreasonable risk of harm and cannot be considered a dangerous or defective condition of a public building. Thus, we conclude that the trial court erred by denying defendant's motion for summary disposition.¹

We reject plaintiff's argument that defendant prematurely sought summary disposition prior to an appropriate opportunity for discovery because, in light of the undisputed facts, particularly the photographs of the scene provided by each party, there is no reasonable chance that discovery would uncover factual support for plaintiff's position. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 25; 672 NW2d 351 (2003).

¹ In light of this conclusion, we do not need to reach defendant's argument regarding lack of notice of the alleged defect.

We reverse the trial court's denial of defendant's motion for summary disposition and remand for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Henry William Saad

/s/ Peter D. O'Connell